

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,)
8 Plaintiff-Appellee,) CA-10-10043
9 vs.) 2:08-CR-347-JCM (PAL)
10 JUAN NUNEZ-ROMERO,)
11 Defendant-Appellant.) **ORDER**

13 Presently before the court is petitioner Juan Carlos Nunez-Romero's motion to vacate pursuant to
14 28 U.S.C. section 2255. (Doc. # 190). The government filed a response in opposition. (Doc. # 192).

Petitioner argues that the court erred in calculating the applicable sentencing range in this matter by failing to include a three-point reduction pursuant to section 3E1.1 of the United States Sentencing Guidelines. However, the Ninth Circuit already rejected this argument in petitioner's direct appeal. (Doc. # 163, pp. 3-4). Additionally, the instant motion is untimely, as it was filed several years after the judgment of conviction became final on June 29, 2011. Therefore, petitioner's motion to vacate will be denied.

20 The court declines to issue a certificate of appealability. The controlling statute in determining
21 whether to issue a certificate of appealability is 28 U.S.C. section 2253, which provides as follows:

22 (a) In a habeas corpus proceeding or a proceeding under section 2255
23 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a [s]tate court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Under this section, the court may issue a certificate of appealability only when a movant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the movant must establish that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotations omitted).

15 The court finds that petitioner has not made the required substantial showing of the denial of a
16 constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists would not find
17 the court's determination that petitioner is not entitled to relief under section 2255 debatable, wrong, or
18 deserving of encouragement to proceed further. Therefore, the court declines to issue a certificate of
19 appealability.

20 | Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that petitioner's motion to vacate
pursuant to 28 U.S.C. section 2255 (doc. # 190) be, and the same hereby is, DENIED.

23 || DATED July 23, 2014.

James C. Mahan
UNITED STATES DISTRICT JUDGE